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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 245

CUDAHY PACKING COMPANY OF LOUISIANA, LTD., PETITIONER,

vs.

Thomas W. Holland
~~PHILIP B. FLEMING,~~ ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 8, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

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UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

PHILIP B. FLEMING, Administrator of the Wage and Hour Division, United States Department of Labor,

versus

CUDAHY PACKING COMPANY OF LOUISIANA, LTD.

No. 341 (CIVIL ACTION).

Appearances:

Messrs. George A. McNulty, General Counsel,
Irvin J. Levy, Assistant General Counsel,
Bessie Margolin, Senior Attorney,
D. Douglas Howard, Associate Attorney,
Attorneys for Plaintiff-Appellee.

Stephen C. Hartel, Esq.,
Jonas C. Sporl, Esq.,
Attorneys for Defendant-Appellant.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within forty (40) days from the 28th day of June, 1940, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

APPLICATION TO COMPEL RESPONDENT TO ATTEND, TESTIFY AND PRODUCE DOCUMENTARY EVIDENCE.

(Number and Title Omitted.)

2 Filed: May 22nd, 1940.

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, pursuant to the Fair Labor Standards Act of 1938, (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C., Title 29, Sec. 201 *et seq.*, hereinafter referred to as the Act, a copy of which is attached hereto and marked "Exhibit A") respectfully applies to this Honorable Court for an order directing Cudahy Packing Company of Louisiana, Ltd., respondent herein, to appear before him, or such representatives as he may designate; to produce documentary evidence and to give testimony, as required by a subpoena duces tecum issued by petitioner, as set forth herein, and as reasons therefor shows the Court:

I.

Petitioner Philip B. Fleming (hereinafter referred to as the Administrator) is the Administrator of the Wage and Hour Division, United States Department of Labor. The Administrator or his designated representatives are empowered by Section 11 (a) of the Act to investigate, enter and inspect places and records (and make transcriptions thereof) of employment in any industry in which he may deem it necessary or appropriate to determine whether any person has violated any provision of the Act, or the investigation of which may aid in the enforcement of the provisions of the Act. By virtue of Section 9 of the Act, the provisions of Sections 9 and 10 of the Federal Trade Commission Act of September 26, 1914, as amended, (U.

S. C., Title 15, Secs. 49 and 50, relating to the attendance of witnesses and the production of books, papers and documents), are made applicable to the jurisdiction, powers and duties of the Administrator, and the Administrator or his designated representatives are given the power to issue and cause to be served upon any person a subpoena requiring the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter under investigation.

II.

Jurisdiction to enter the order prayed for in this petition is conferred upon this Court by virtue of Section 9 of the Federal Trade Commission Act made applicable by Section 9 of the Act as stated in paragraph I of this petition, which empowers any of the District Courts of the United States within the jurisdiction of which an inquiry is being carried on, in case of refusal to obey a subpoena issued to any corporation or other person, to issue an order requiring such corporation, or other person, to appear or produce documentary evidence. Investigation, in the course of which the aforesaid subpoena duces tecum was issued by the Administrator and served upon respondent, is being carried on in the Eastern District of Louisiana within the jurisdiction of this Court.

III.

Respondent, a corporation organized and existing under and by virtue of the laws of the State of Louisiana, is a branch of the Cudahy Packing Company of Chicago, Illinois, a corporation organized and existing under and by virtue of the laws of the State of Maine having numerous branches throughout the country. Respondent in its establishment located at Shreveport, Louisiana, is engaged in the general business of manufacturing, receiving, unload-

ing, handling, distributing and selling meat products and other packing house products. A major portion of the goods received by respondent is shipped from sources without the State of Louisiana and respondent ships, transports and delivers the goods manufactured or handled by it to retail stores situated in the States of Louisiana, Texas and Arkansas. The respondent is in these and other ways an employer of employees engaged in interstate commerce and in the production of goods for interstate commerce, within the meaning of the Act.

4 IV.

The Administrator, having reasonable cause to believe that respondent in its said business has been and is violating the provisions of Sections 7, 11 (c) and the regulations issued pursuant thereto (known as Title 29, c. 5, Code of Federal Regulations, Part 516, a copy of which is attached hereto and marked "Exhibit B"), 15 (a) (2) and 15 (a) (5) of the Act, designated Henry T. Chambers, an officer of the Wage and Hour Division, pursuant to Section 11 (a) of the Act to investigate and gather data regarding wages, hours and other conditions and practices of employment in respondent's said place of business in Shreveport, Louisiana, and to investigate such facts, conditions, practices or matters as should be necessary or appropriate to determine whether respondent had violated such provisions of the Act. Pursuant to such investigation by Henry T. Chambers, a request was made by him, as officer of the Wage and Hour Division, of the respondent for its books and records relating to wages and hours worked by its employees in its said plant at Shreveport, Louisiana. Respondent refused to make such records available.

V.

On March 14, 1940, the Administrator having found, as recited in his order hereinafter referred to, that there was

reasonable cause for believing respondent was violating the aforesaid provisions of the Act, issued an order pursuant to Sections 9 and 11 (a) of the Act that an investigation be made to determine whether respondent, or any of its officers, agents or employees had violated or were violating any of the said provisions of the Act or of the regulations promulgated pursuant thereto, and authorized David S. Polier and Robert T. Amis, officers of the Wage and Hour Division, and each of them, to investigate and gather such data, enter and inspect such places and such records, to subpoena witnesses and records relevant or material to the injury, and to perform all other duties appearing in said order authorized by law. A copy of said order is attached hereto, marked "Exhibit C" and made a part hereof.

5 VI.

A subpoena duces tecum duly executed by Robert T. Amis, regional director, pursuant to authority granted by the Administrator, requiring respondent to appear before Stephen MacRae, an officer of the Wage and Hour Division, United States Department of Labor, Room 516, Carondelet Building, in the City of New Orleans, Louisiana, on the 15th day of April, 1940, at 10 A. M. of that day to testify and produce certain specified books, papers, and documents of respondent was duly served upon respondent, a corporation, by serving a duplicate original copy of the said subpoena duces tecum (a copy of which is attached hereto, marked "Exhibit D" and made a part hereof) upon R. J. Joucken, Manager of the respondent's New Orleans branch office at 1501 Poydras Street, New Orleans, Louisiana. The said R. J. Joucken was and is now in complete charge and had custody and control of the books, papers and documents called for in the said subpoena duces tecum.

VII.

Respondent, through J. E. Sheane, one of its officers, addressed a letter dated April 6, 1940, to said Stephen R. MacRae advising him that the company would furnish the records covering complaints "if you will write us a letter setting out the names of the complaining parties." In a letter dated April 11, 1940, Robert T. Amis, regional director of the Wage and Hour Division, replied to respondent pointing out that the Division could not properly disclose the confidential information requested, that the subpoena had been duly issued and the respondent would be expected to comply at the time and place designated in the subpoena. In a letter dated April 15, 1940, respondent, through its attorneys, the firm of Hortel & Sporl, reiterated the company's position that it would furnish records only if given the names of the complaining parties and if the alleged violations were more specifically stated. Copies of this correspondence are attached hereto and marked "Exhibit E."

At 10 o'clock A. M. on the 15th day of April, 1940, the said Stephen MacRae, designated in the aforesaid subpoena duces tecum, an officer of the Wage and Hour Division, United States Department of Labor, was present in Room 516, Carondelet Building, in the City of New Orleans, State of Louisiana, pursuant to the said subpoena duces tecum for the purpose of taking testimony and examining and copying the books, papers and documents the production of which was required by the said subpoena. The respondent failed to appear and failed to produce said documentary evidence, books, papers and documents described and specified in the said subpoena duces tecum, and has since failed and refused and still refuses to produce the books, papers and documents described and specified in the said subpoena duces tecum.

VIII.

All books, papers and documents required to be produced by said subpoena duces tecum were, at the time of the issuance of said subpoena, and are now relevant, material, necessary and appropriate to determine whether respondent has violated Sections 7, 11 (c), 15 (a) (2) and 15 (a) (5) of the Act and will aid in the enforcement of the provisions of the Act.

IX.

The refusal of respondent to appear before said officer and there produce the books, papers and documents required by said subpoena duces tecum has impeded and continues to impede the progress of the investigation hereinabove referred to.

X.

The books, papers and documents required to be produced by the said subpoena duces tecum were at the time of its issuance and service and are now in the possession, custody and control of respondent.

XI.

The payroll records and books for the period from October 24, 1938, to March 23, 1940, as specified and described in the said subpoena duces tecum, are necessary, relevant, appropriate and essential to the Administrator for the purpose of determining the amount of earnings of the employees employed by respondent in its said plant at Shreveport, Louisiana, and will assist in the establishment of the extent of the wage violations, if any, of the Act with respect to the said employees.

XII.

The time records and books for the period from October 24, 1938, to March 23, 1940, as specified and described in the said subpoena duces tecum, will indicate the hours worked by said employees for such period and are accordingly necessary relevant and appropriate to the determination of whether any provisions of the Act have been violated, whether the said employees' rate of pay meets the requirements of the Act, and whether the respondent has maintained records in accordance with the provisions of the Act and the applicable regulations of the Administrator.

XIII.

The shipping records and related documents for the period from October 24, 1938, to March 23, 1940, as specified and described in the said subpoena duces tecum, will show the extent, if any, of the interstate business of respondent and whether the Act covers the employees, if any, who were not paid in accordance with the terms of the Act.

XIV.

No previous application has been made for the relief requested herein.

Wherefore, petitioner respectfully prays:

(a) That an order to show cause be issued forthwith directing respondent to appear before this Court upon a day certain to be fixed in the order and show cause, if any there be, whether an order should not be issued requiring respondent to appear before petitioner or one of the officers designated by him at such time and place as this Court may order, and there to produce the books,

papers and documents described in the said subpoena duces tecum;

(b) That upon return of the order to show cause an order issue requiring respondent to appear before petitioner or one of the officers designated by him at such time and place as this Court may order, and there
8 to produce the books, papers and documents described in the subpoena duces tecum;

(c) That the petitioner have such other and further relief as may be necessary and appropriate.

(Signed) GEORGE A. McNULTY,
(George A. McNulty),
General Counsel.

(Signed) IRVIN J. LEVY,
(Irving J. Levy),
Assistant General Counsel.

(Signed) BESSIE MARGOLIN,
(Bessie Margolin),
Senior Attorney.

(Signed) D. DOUGLAS HOWARD,
(D. Douglas Howard),
Associate Attorney.

1512 Pere Marquette Bldg.,
New Orleans, La.

Address:
Wage and Hour Division,
United States Department of Labor,
14th and Constitution Avenue,
Washington, D. C.
or
Wage and Hour Division,
United States Department of Labor,
1512 Pere Marquette Building,
105 Baronne Street,
New Orleans, Louisiana.

State of Louisiana,
Parish of Orleans.

Henry T. Chambers, being duly sworn, deposes and says that he is an inspector of the Wage and Hour Division of the United States Department of Labor, and that he is a representative of the Administrator as alleged in the foregoing petition; that he has read the foregoing application for an order of this Court and knows the contents thereof; That the same is true of his knowledge, except as to those matters therein stated to be alleged on information and belief, and that he believes those matters to be true.

(Signed) HENRY T. CHAMBERS.

Sworn to and subscribed by me this 17th day of May, 1940.

(Signed) D. DOUGLAS HOWARD,
(Seal) Notary Public.

My commission expires at death.

EXHIBIT A.

Chapter 676—3d Session.

[Public—No. 718—75th Congress.]

[S. 2475.]

An Act to provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Fair Labor Standards Act of 1938."

Finding and Declaration of Policy.

Sec. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

Definitions.

Sec. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an em-
11 ployer), or anyone acting in the capacity of officer or agent of such labor organization.

(e) "Employee" includes any individual employed by an employer.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 15 (g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed.

(i) "Goods means goods (including ships and marine equipment), wares, products, commodities, merchandise, or

articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other maner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(1) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Chief of the Children's Bureau in the Department of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Chief of the Children's Bureau certifying that such person is above the

oppressive child-labor age. The Chief of the Children's Bureau shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Chief of the Children's Bureau determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilites, if such board, lodging, or other facilities are customarily furnished by such employer to his employees.

Administrator.

Sec. 4. (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as
12 the Administrator of the Wage and Hour Division (in this Act referred to as the "Administrator.") The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $10,000 a year.

(b) The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this Section may appear for and represent the Ad-

ministrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) The Administrator shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable.

Industry Committees.

Sec. 5. (a) The Administrator shall as soon as practicable appoint an industry committee for each industry engaged in commerce or in the production of goods for commerce.

(b) An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as chairman, a like number of persons representing employees in the industry, and a like number of persons representing employers in the industry. In the appointment of the persons

representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and a decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Administrator shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Administrator shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Administrator to furnish additional information to aid in its deliberations.

Minimum Wages.

Sec. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this Section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under Section 8, whichever is lower, and

(4) at any time after the effective date of this Section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under Section 8.

(b) This Section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

Maximum Hours.

Sec. 7. (a) No employer shall, except as otherwise provided in this Section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this Section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate

not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated Subsection (a) by employing any employee for a workweek in excess of that specified in such Subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand hours during any period of twenty-six consecutive weeks,

(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand hours during any period of fifty-two consecutive weeks, or

(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy

products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugar cane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of Subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonable fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of Subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

(d) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

14 Wage Orders.

Sec. 8. (a) With a view to carrying out the policy of this Act by reaching, as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce, the Administrator shall from time to time convene the industry committee for each such industry and the industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under Section 6 by employers engaged in commerce or in the production of goods for commerce in such industry or classifications therein.

(b) Upon the convening of an industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry.

(c) The industry committee for any industry shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of 40 cents an hour) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classification shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Administrator shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Administrator a report containing its recommendations with respect to the matters referred to it. Upon the filing of such report, the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such recommendations. If the Administrator disapproves such recommendations, he shall again refer the matter to such committee, or to another industry committee for such industry (which he may appoint for such purpose), for further consideration and recommendations.

(e) No order issued under this section with respect to any industry prior to the expiration of seven years from the effective date of Section 6 shall remain in effect after such expiration, and no order shall be issued under this section with respect to any industry on or after such expiration, unless the industry committee by a preponderance of the evidence before it

recommends, and the Administrator by a preponderance of the evidence adduced at the hearing finds, that the continued effectiveness or the issuance of the order, as the case may be, is necessary in order to prevent substantial curtailment of employment in the industry.

(f) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein. No such order shall take effect until after due notice is given of the issuance thereof by publication in the Federal Register and by such other means as the Administrator deems reasonable calculated to give to interested persons general notice of such issuance.

(g) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give general notice to interested persons.

Attendance of Witnesses.

Sec. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of Sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C., 1934 edition, title 15, Secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Administrator, the Chief of the Children's Bureau, and the industry committees.

Court Review.

Sec. 10. (a) Any person aggrieved by an order of the Administrator issued under Section 8 may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such Court, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Administrator, and thereupon the Administrator shall certify and file in the Court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such Court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the Court shall be limited to questions of law, and findings of fact by the Administrator when supported by substantial evidence shall be conclusive. No objection to the order of the Administrator shall be considered by the Court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. If application is made to the Court for leave to adduce additional evidence, and it is shown to the satisfaction of the Court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the Court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the Court may seem proper. The Administrator may modify his findings by reason of the additional evidence so taken, and shall file with the Court such modi-

fied or new findings which if supported by substantial evidence shall be conclusive, and shall also file his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of
16 the Court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, Secs. 346 and 347).

(b) The commencement of proceedings under Subsection (a) shall not, unless specifically ordered by the Court, operate as a stay of the Administrator's order. The Court shall not grant any stay of the order unless the person complaining of such order shall file in Court an undertaking with a surety or sureties satisfactory to the Court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

Investigations, Inspections, and Records.

Sec. 11. (a) The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in Section 12 and in Subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for

all the investigations and inspections necessary under this section. Except as provided in Section 12, the Administrator shall bring all actions under Section 17 to restrain violations of this Act.

(b) With the consent and co-operation of State agencies charged with the administration of State labor laws, the Administrator and the Chief of the Children's Bureau may, for the purpose of carrying out their respective functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

Child Labor Provisions.

Sec. 12. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods

under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) The Chief of the Children's Bureau in the Department of Labor, or any of his authorized representatives, shall make all investigations and inspections under Section 11 (a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under Section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act, relating to oppressive child labor.

Exemptions.

SEC. 13. (a) The provisions of Sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; or (3) any employee employed as a seaman; or (4) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or (5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or by-products thereof; or (6) any em-

ployee employed in agriculture; or (7) any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under Section 14; or (8) any employee employed in connection with the publication of any weekly or semi-weekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; or (9) any employee of a street, surburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products.

(b) The provisions of Section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.

(c) The provisions of Section 12 relating to child labor shall not apply with respect to any employee employed in agriculture while not legally required to attend school, or to any child employed as an actor in motion pictures or theatrical productions.

Learners, Apprentices, and Handicapped Workers.

Sec. 14. The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1)

the employment of learners, of apprentices, and of messengers employed exclusively in delivering letters and messages, under special certificates issued pursuant to regulations of the Administrator, at such wages lower than the minimum wage applicable under Section 6 and subject to such limitations as to time, number, proportion, and length of service as the Administrator shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Administrator, at such wages lower than the minimum wage applicable under Section 6 and for such period as shall be fixed in such certificates.

Prohibited Acts.

Sec. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of Section 6 or Section 7, or in violation of any regulation or order of the Administrator issued under Section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation;

(2) to violate any of the provisions of Section 6 or Section 7, or any of the provisions of any regulation or order of the Administrator issued under Section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.

(4) to violate any of the provisions of Section 12;

(5) to violate any of the provisions of Section 11 (c), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of Subsection (a) (1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

Penalties.

Sec. 16. (a) Any person who wilfully violates any of the provisions of Section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of Section 6 or Section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as

liquidated damages. Action to recover such liability may be maintained in any Court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The Court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

Injunction Proceedings.

Sec. 17. The District Courts of the United States and the United States Courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of Section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., 1934 edition, Title 28, Sec. 381), to restrain violations of Section 15.

Relation to Other Laws.

Sec. 18. No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a
19 minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess

of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

Separability of Provisions.

Sec. 19. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to the other persons or circumstances shall not be affected thereby.

Approved, June 25, 1938.

(Public—No. 344—76th Congress.)

(Chapter 605—1st Session.)

(S. 1234.)

An Act.

To amend Section 13 (a) of the Act approved June 25, 1938 (52 Stat. 1069), entitled "Fair Labor Standards Act of 1938."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 13 (a) of the Act approved June 25, 1938," be, and the same is hereby, amended by adding a new Subsection 11 as follows: "or (11) any switchboard operator employed in a public telephone exchange which has less than five hundred stations."

Approved, August 9, 1939.

20 EXHIBIT B.

Title 29, Chapter V.

Code of Federal Regulations.

Part 516.

Regulations on
Records to be Kept by Employers
Pursuant to Section 11 (c) of the Fair Labor
Standards Act of 1938 (52 Stat. 1060)
and Explanation
of the Records Regulations.

October 1939.

United States Department of Labor,
Wage and Hour Division.

21 Part 516—

Regulations On Records To Be Kept By Employers Pursuant to Section 11 (c) Of The Fair Labor Standards Act.[1]

Section 516.1—Records Required.

Every employer subject to any provisions of the Fair Labor Standards Act or any order issued under this Act shall make and preserve records containing the following information with respect to each person employed by him, with the exception of those specified in Sections 13 (a) (3), 13 (a) (4), 13 (a) (5), 13 (a) (6), 13 (a) (8), 13 (a) (9), and 13 (a) (10) of the Act:

(a) Name in full.

[1] Issued under the authority contained in Section 11 (c), 52 Stat. 1060.

(b) Home address.

(c) Date of birth if under 18.

(d) Hours worked each workday and each workweek.

(e) Regular rate of pay and basis upon which wages are paid.[2]

(f) Wages at regular rate of pay for each workweek, excluding extra compensation attributable to the excess of the over-time rate over the regular rate.[2]

(g) Extra wages for each workweek attributable to the excess of the overtime rate over the regular rate.[2]

(h) Additions to cash wages at cost, or deductions from stipulated wages in the amount deducted or at the cost of the item for which deduction is made, whichever is less.[3]

(i) Total wages paid for each workweek.

22 *Provided, however,* That with respect to employees specified in Section 13 (b) of the Act, records referred to in paragraphs (f) and (g) of this section shall not be required; and

Provided, further, That with respect to employees who are specified in Sections 13 (a) (2) of the Act and em-

[2] These three items of information are only required when overtime is worked by the employee.

[3] This information is required only where the cash wage actually paid is less than the minimum wage required by the Act. The reasonable cost of board, lodging, and other facilities as part of wages, is defined and delimited by regulations of the Wage and Hour Division: Part 531—(Regulations determining the reasonable cost of board, lodging,and other facilities pursuant to Sec. 3 (m) of the Fair Labor Standards Act.) This matter is dealt with further in Interpretative Bulletin No. 3 of the Wage and Hour Division.

ployees who are defined in regulations of the Wage and Hour Division: Part 541—(Regulations defining and delimiting the terms "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman" pursuant to Sec. 13 (a) (1) of the Fair Labor Standards Act)—employers need make and preserve records containing the following information only:

(a) Name in full.

(b) Home address.

(c) Occupations.

Provided further, That with respect to employees employed or purported to be employed by an employer in pursuance of the provisions of Section 7 (b) (1) or Section 7 (b (2) of the Fair Labor Standards Act, employers shall comply with each of the following additional requirements:

(a) Keep and preserve a copy of each collective bargaining agreement which entitles or purports to entitle an employer to employ any of his employees in pursuance of the provisions of Section 7 (b) (1) or Section 7 (b) (2) of the Fair Labor Standards Act.

(b) Report and file with the Administrator at Washington, D. C., within thirty days after such collective bargaining agreement has been made, a copy of each such collective bargaining agreement. Likewise, a copy of each amendment or addition thereto shall be reported and filed with the Administrator at Washington, D. C., within thirty days after such amendment or addition has been agreed upon. If any such collective bargaining agreement, or amendment or addition thereto, was made prior to the

25th day of April, 1939, a copy thereof shall be reported and filed with the Administrator at Washington, D. C., on or before the 26th day of May, 1939. The reporting and filing of any collective bargaining agreement or amendment or addition thereto shall not be construed to mean that such collective bargaining agreement or amendment or addition thereto is a collective bargaining agreement within the meaning of the provisions of Section 7 (b) (1) or Section 7 (b) (2).

(c) Make and preserve a record designating each employee employed pursuant to each such collective bargaining agreement and each amendment and addition thereto.

Provided further,[4] That with respect to employees employed in occupations in the performance of which the employee receives tips or gratuities from third persons which are accounted for or turned over by the employee to the employer, additional records containing the following information with respect to each such employee shall be made and preserved by the employer:

(a) Total hours worked each workweek in occupations in the performance of which the employee receives tips or gratuities from third persons.

(b) Total hours worked each workweek in any other occupation.

(c) Wages paid each workweek for hours worked under (a) above; *provided, however,* that if the employer claims as "wages paid" the amount of any gratuities or tips volun-

[4] Whether a contract requiring employees to account for tips is legal is a question for the Courts to decide. The Wage and Hour Division is not taking a position on this question but is requiring records that will protect both employer and employee whatever the ultimate judicial decision on the validity of such contract may be. (This section, as amended, approved by the Administrator October 13, 1939, and published in the Federal Register October 14, 1939.)

tarily paid to the employee by third persons and accounted for or turned over by the employee to the employer, such amounts must be recorded in a separate column from that in which any other compensation is recorded.

(d) Wages paid each workweek for hours worked under (b) above; *provided, however,* that if the employer claims as "wages paid" the amount of any gratuities or tips voluntarily paid to the employee by third persons and accounted for or turned over by the employee to the employer, such amounts must be recorded in a separate column from that in which any other compensation is recorded.

Section 516.2—Form of Records.

No particular order or form is prescribed for these records, provided that the information required in Section 516.1 is easily obtainable for inspection purposes.

Section 516.3—Place and Period for Keeping Records.

Each employer shall keep the records required by these regulations for his employees within each State either at the place or places of employment or, where that is impracticable, in or about at least one of his places of business within such State, unless otherwise authorized by the Administrator. Such records shall be kept safe and readily accessible for a period of at least 4 years after the enrty of the record, and such records shall be open to inspection and transcription by the Administrator or his duly authorized and designated representatives at any time.

Section 516.4—Definitions of Terms Used in These Regulations.

(a) Act.—The "Act" means the Fair Labor Standards Act of 1938.

(b) Hours worked.—For the purpose of these regulations the term "hours worked" shall include all time during which an employee is required by his employer to be on duty or to be on the employer's premises or to be at a prescribed workplace.

(c) Workday and workweek.—For the purposes of these regulations a "workday" with respect to any employee shall be any 24 consecutive hours and a "workweek" with respect to any employee shall be 7 consecutive days provided that the workday or workweek is not changed for the purpose of evasion of provisions of the Act or any regulations prescribed pursuant thereto.

(d) Wage or wages.—For the purposes of these regulations, the term "wage" or "wages" means all renumeration for employment or whatsoever nature whether paid on time work, piece work, salary, commission, bonus, or other basis.

(e) Employee.—The term "employee" is defined by the Act (Sec. 3 (e)) to include "any individual employed by an employer," and the term "employ" is defined by the Act (Sec. 3 (g)) to include "to suffer or permit to work." It shall be the duty of each employer to make and preserve all records required under these regulations with respect to each employee employed to him, whether or not such employees perform their work in an establishment or plant operated by the employer or subject to his immediate supervision. Thus, the required records shall be made and preserved by the employer for "industrial home workers" or other employees who produce goods for the employer from material furnished by home or who are compensated for such employment at piece rates, wherever such employees actually perform their work.

(f) Regular rate of pay.—For the purpose of these regulations, the term "regular rate of pay" means—

(i) With respect to an employee paid solely on an hourly basis (i. e., receiving no additional wage whatever): the hourly wage rate at which he is employed.

(ii) With respect to an employee employed on a daily, weekly, semi-monthly,[5] or monthly[5] basis for a regular number of hours per week determined by agreement or custom: the average hourly rate[6] obtained by dividing the wages[7] earned for that regular number of hours in the workweek by that regular number of hours; and

(iii) With respect to an employee paid on any other basis than those specified in (i) and (ii) of this Paragraph (f): the average hourly rate[6] obtained by dividing the wages[7] earned for the particular workweek by the total number of hours worked during that workweek.

Section 516.5—Petition for Amendment of Regulations.

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[5] With respect to an employee paid on a monthly basis, the wages earned during a workweek are computed by multiplying the monthly wage by 12 and dividing the result by 52. With respect to an employee paid on a semi-monthly basis, the wages earned during a workweek are computed by multiplying the semi-monthly wage by 24 and dividing the result by 52.

[6] In computing the average hourly rate fractions of less than one-half cent may be disregarded, and fractions over one-half cent should be raised to the next full cent.

[7] In computing the average hourly rate all wages earned or paid during a particular workweek must be included except

(a) Bonuses not computed on the basis of measured work performed (e. g., bonuses for punctuality, simple Christmas bonuses, etc.)

(b) Extra compensation attributable to the excess of the overtime rate over the regular rate, and

(c) Additions to the cash wage for board, lodging or other facilities furnished by the employer.

Any person wishing a revision of any of the terms of the foregoing regulations on records to be kept by employers (Secs. 516.1 through 516.4) may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If upon inspection of the petition the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provisions for affording interested parties an opportunity to present their views, both in support and in opposition to the proposed changes.

26 (The foregoing sections, except as noted, approved by the Administrator October 21, 1938 and published in the Federal Register October 22, 1938.)

Section 516.90—Regulations on Records to be Kept by Employers of Industrial Home Workers, Pursuant to Section 11 (c) of the Fair Labor Standards Act.

Every employer subject to any provisions of the Fair Standards Act or any order issued under this Act who directly or indirectly distributes work to be performed by an industrial home worker shall be relieved of the provisions for record-keeping contained in Sections 516.1, 516.2, 516.3, and 516.4 (b) of these Regulations with respect to such industrial home worker and shall, in lieu of such requirements, make and preserve, records containing the following information with respect to each such industrial home worker engaged on work distributed by such employer or indirectly in his interest:

(a) Name in full.

(b) Home address.

(c) Date of birth if under 19.

(d) With respect to each lot of work issued.

27 (1) Date and hour on which work is given out to worker, and amount of such work given.

(2) Date and hour on which work is returned by worker, and amount of such work returned.

(3) Kind of articles worked on and operations performed.

(4) Piece rates paid.

(5) Hours worked on each lot of work returned.

(6) Wages paid for each lot of work returned.

(7) Deductions for Social Security taxes.

(8) Date of payment.

(e) With respect to each week:

(1) Hours worked each week.

(2) Wages earned each week at regular piece rates.

(3) Extra pay each week for overtime.

(4) Total wages earned each week.

(5) Deductions for Social Security taxes.

(f) name and address of each agent, distributor or contractor through whom home work is distributed.

In addition to the keeping of the above records, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by him to each worker) shall be kept for each industrial home worker, and the information required therein shall be entered by the employer or the person distributing home work on behalf of such employer each time work is given out to or received from an industrial home worker.

Except for the time necessary for the making of entries by the employer, the handbook must remain in the possession of the industrial home worker until such time as the Wage and Hour Division may request it.

A separate record and a separate handbook must be kept for each individual performing work in or about a home on any lot or amount of home work distributed.

For the purpose of this section, the term "Industrial Home Worker". means any person producing in or about a home, for an employer, goods from material furnished directly by or indirectly for such employer.

This Section shall be in force and effect until repealed or modified by the Administrator.

28 (This section, as amended, approved by the Administrator September 23, 1939 and published in the Federal Register September 26, 1939.)

29 For release
Tuesday, February 27, 1940. $-648

United States Department of Labor,
Wage and Hour Division,
Washington, D. C.

Title 29—Labor.

Chapter V—Wage and Hour Division.

Part 516.

Regulations on Records To Be Kept By Employers Pursuant to Section 11 (c) of The Fair Labor Standards Act.

The following amendment to Regulations, Part 516 (Regulations on Records to be Kept by Employers Pursuant to Section 11 (c) of the Fair Labor Standards Act of 1938) is hereby issued. This amendment amends Section 516.3 of said regulations (Place and Period for Keeping Records) and shall become effective upon my signing the original and publication thereof in the Federal Register and shall be in force and effect until repealed or modified by regulations thereafter made and published.

Signed at Washington, D. C., this 20th day of February, 1940.

(Sgd.) HAROLD D. JACOBS,
(Harold D. Jacobs),
Administrator Wage and Hour Division, U. S. Department of Labor.

30 Section 516.3—Place and Period for Keeping Records.

(a) Each employer shall keep the records required by Section 516.1 at the place or places of employment, or at

one or more established central record keeping offices where such records are customarily maintained. Where such records are maintained at a central record keeping office, other than at the place or places of employment, the employer, in addition to the records required by Section 516.1, shall maintain a record for each employee of the total wages paid and total hours worked each workweek at the place or places of employment.

(b) All records required by Section 516.1 shall be kept safe and readily accessible for a period of at least four years after the entry of the record, and such additional records as are required by Subsection (a) hereof shall be kept safe and readily accessible for a period of at least two years after the entry of the record. All such records shall be open to inspection and transcription by the Administrator or his duly authorized and designated representative at any time. Where the records required by Section 516.1 are maintained at a central record keeping office, other than at the place or places of employment, such records shall be made available at the place or places of employment without delay upon reasonable advance notice from the Administrator or his duly authorized and designated representative.*

*(This Section 516.3 as amended, issued under the authority contained in Section 11 (c), 52 Stat. 1060.)

31 EXHIBIT C.

United States of America,
Wage and Hour Division,
Department of Labor.

In the Matter of Cudahy Packing Company of Louisiana Ltd., New Orleans and Shreveport, Louisiana.

Order for Investigation and Designating Officers for Taking Testimony.

March 14, 1940.

The Administrator having reasonable grounds to believe that the Cudahy Packing Company of Louisiana, Ltd., beginning on or about October 24, 1938, and continuing to the date hereof has violated the provisions of Sections 7 and 15 (a) (2) of the Fair Labor Standards Act of 1938 (Public No. 718, 75th Congress; 52 Stat. 1060), hereinafter referred to as the "Act," in that during said period it employed many of its employees engaged in commerce or in the production of goods for commerce for work weeks longer than the hours specified in Section 7 of the Act for which it failed to compensate them for their employment in excess of the hours specified in Section 7 of the Act at a rate not less than one and one-half times the regular rates at which they were respectively employed; and

The Administrator having reasonable grounds to believe that the said Cudahy Packing Company of Louisiana, Ltd., during the said period has violated the provisions of Section 15 (a) (1) of the Act in that it has transported, offered for transportation, shipped, delivered and sold in interstate commerce goods produced by it in the production of which many of its employees were employed in violation of Section 7 as hereinbefore alleged, and has shipped, delivered

and sold, with knowledge that shipment or delivery or sale thereof in interstate commerce was intended, goods produced by it in the production of which many of its employees were employed in violation of Section 7 as hereinabove alleged; and

The Administrator having reasonable grounds to believe that the said Cudahy Packing Company of Louisiana, Ltd., during the said period has violated Sections 11 (c) and 15 (a) (5) of the Act in that, although an employer subject to the provisions of the Act, it has failed to make, keep and preserve adequate records of the persons employed by it and of the wages, hours and other conditions and practices of employment maintained by it as required by regulations issued by the Administrator pursuant to Section 11 (c) of the Act, which regulations, together with amendments thereto, were published in the Federal Register and are known as Title 29, Chapter V, Code of Federal Regulations, Part 516; and the Administrator having reasonable grounds to believe that the said Cudahy Packing Company of Louisiana, Ltd., during the said period has made and recorded various entries in the records it has kept pursuant to said regulations of the persons employed by it and of the wages and hours and other conditions and practices of employment maintained by it, knowing such entries to be false in material respects; and

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It being the opinion of the Administrator that the investigation herein ordered to be made is necessary and appropriate to determine whether said Cudahy Packing Company of Louisiana, Ltd., or any of its officers, agents or employees has violated said provisions of the Act or the provisions of said regulations, and will aid in the enforcement of the provisions of the Act;

It Is Ordered, pursuant to Sections 9 and 11 (a) of the Act, that an investigation be made to determine whether

the said Cudahy Packing Company of Louisiana, Ltd., or any of its officers, agents or employees has violated any of said provisions of the Act or of said regulations; and

It Is Further Ordered, pursuant to Sections 9 and 11 (a) of the Act, that for the purpose of such investigation David S. Polier and Robert T. Amis, officers of the Wage and Hour Division, United States Department of Labor, and each of them, be and they hereby are designated to investigate and gather such data, enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as they or any of them may deem relevant or material to the inquiry, and to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any pay roll or other records pertaining to the wages, hours, and other conditions and practices of employment of said Cudahy Packing Company of Louisiana, Ltd., and of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law; and

33

It Is Further Ordered that such investigation begin and continue at such times and places as said officers or any of them may determine.

PHILIP B. FLEMING,
Colonel, Corps of Engineers,
Administrator.

I certify this to be a true copy of the original as signed by Philip B. Fleming, Colonel, Corps of Engineers, Administrator.

(Signed) NELLIE M. SPINLE,
Office of the Administrator.

34

EXHIBIT D.

Subpoena Duces Tecum.

United States of America,
Wage and Hour Division,

Department of Labor.

To The Cudahy Packing Company of Louisiana, Ltd.,
1501 Poydras Street, New Orleans, Louisiana.

At the instance of the Administrator, Wage and Hour Division, Department of Labor, you are hereby required to appear before Stephen R. MacRae, an officer of the Wage and Hour Division, Department of Labor, at Room 516, Carondelet Building, 226 Carondelet Street, in the City of New Orleans, Louisiana, on the 15th day of April, 1940, at 10:00 a. m., of that day, to testify in the Matter of The Cudahy Packing Company of Louisiana, Ltd., involving an investigation, pursuant to the provisions of Sections 9 and 11 (a) of the Fair Labor Standards Act of 1938, of complaints of violations by the said Corporation of Sections 7, 11 (c), 15 (a) (1), 15 (a) (2) and 15 (a) (5) of the said Act.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

(1) Any and all books and records which record the wages paid to your employees employed in your plant in Shreveport, Louisiana, during the period from October 24, 1938, to March 23, 1940.

(2) Any and all books, documents, time cards, time sheets, papers, or memoranda made or kept by you which

record the hours worked each workday and each workweek by your said employees during the period from October 24, 1938, to March 23, 1940.

(3) Any and all books, records, documents, receiving slips, invoices, or memoranda of purchases and shipments received by you during the period from October 24, 1938, to March 23, 1940.

(4) Any and all invoices, shipping receipts, copies of bills of lading, or other documents, records or memoranda pertaining to goods sold, shipped, delivered, transported, or offered for transportation from your said plant in Shreveport, Louisiana, during the period from October 24, 1938, to March 23, 1940.

35 Fail not at your peril.

In testimony whereof, the undersigned, an officer designated by the Administrator of the Wage and Hour Division of said Department of Labor, has hereunto set his hand at Birmingham, Alabama, this 1st day of April, 1940.

(Signed) ROBERT T. AMIS,
(Robert T. Amis).

Notice To Witness: If claim is made for witness fee or mileage, this subpoena should accompany voucher.

36 EXHIBIT E.

(Copy.)

Law Offices
Hartel & Sporl
Canal Bank Building
New Orleans

Stephen C. Hartel
Jonas C. Sporl

April 15th, 1940.

Mr. Stephen R. MacRae,
Wage & Hour Division,
Department of Labor,
Room 516,
Carondelet Building,
New Orleans, La.

Dear Mr. MacRae:

In response to the subpoena duces tecum for the following records of the Cudahy Packing Company of Louisiana, Ltd.;

(1) Any and all books and records which record the wages paid to your employees employed in your plant in Shreveport, Louisiana, during the period from October 24, 1938 to March 23, 1940.

(2) Any and all books, documents, time cards, time sheets, papers or memoranda made or kept by you which record the hours worked each workday and each workweek by your said employees during the period from October 24, 1938 to March 23, 1940.

(3) Any and all books, records, documents, receiving slips, invoices, or memoranda of purchases and shipments received by you during the period from October 24, 1938 to March 23, 1940.

on behalf of said Cudahy Packing Company of Louisiana, Ltd., we wish to reiterate their position as outlined to you in their letter of April 6th:

"Your office has served this branch with a subpoena duces tecum for records of our Shreveport, La., branch, in connection with the Federal Wage & Hour Act, and in that subpoena it is stated that your department has 'complaints of violations by this corporation of Section 7, 11 (c), 15 (a) (1), 15 (a) (2) and 15 (a) (5) of the said
37 Act.'

I feel sure that our company will furnish you with the records convering said complaints if you will write us a letter setting out the names of the complaining parties, and the alleged violations on the part of this company.

Would you not be so kind as to write us regarding these complaints so that I can pass it on to the proper party for handling before April 5th, 1940."

Our clients are ready and willing to co-operate in every respect if you will be specific and particularly state what alleged violations of the act are now before you for investigation, and the names of the complaining parties.

Yours very truly,
HARTEL & SPORL,
(S) By STEPHEN C. HARTEL.

38 The Cudahy Packing Co. of La. Ltd.
New Orleans, La.

April 6, 1940.

Stephen R. MacRae,
Wage & Hour Division,
Department of Labor,
Room 516,
Carondelet Building,
226 Carondelet Street.
New Orleans, La.

Dear Mr. MacRae:

Your office has served this branch with a subpoena Duces Tecum for records of our Shreveport, La. branch, in con-

nection with the Federal Wage & Hour Act, and in that subpoena it is stated that your departmennt has "complaints of violations by this corporation of Section 7, 11 (c), 15 (a) (1), 15 (a) (2) and 15 (a) (5) of the said Act."

I feel sure that our company will furnish you the records covering said complaints if you will write us a letter setting out the names of the complaining parties, and the alleged violations on the part of this company.

Would you not be so kind as to write us regarding these complaints so that I can pass it on to the proper party for handling before April 15th, 1940.

Yours very truly,
THE CUDAHY PACKING CO.
OF LA. LTD.,
(S) J. E. SHEANE.

JES:MB

39 (Copy.)

Apr. 11, 1940

17-362

808 Comer Building
Birmingham, Alabama

The Cudahy Packing Co. of La., Ltd.
New Orleans, Louisiana.

Attention: J. E. Sheane.

Gentlemen:

Reference is made to your letter of April 6, 1940 addressed to Mr. Stephen R. MacRae of our New Orleans, Louisiana, office.

We cannot properly disclose to you the confidential information which you have requested.

The subpoena to which you have referred is in proper form and has been duly issued. The Division will expect

your company to comply with the subpoena and to produce the subpoenaed books and records at the designated time and place.

Very truly yours,
ROBERT T. AMIS,
Regional Director.

RTA/moss
cc—Mr. Stephen R. MacRae.

---

40 ORDER TO SHOW CAUSE.

Number and Title Omitted.

(Filed May 22, 1940.)

Upon the verified application of the petitioner filed herein, and sufficient cause appearing therefor, it is

Ordered, that respondent, Cudahy Packing Company of Louisiana, Ltd., show cause, if any there be, before this Court at the United States Courthouse in the City of New Orleans, State of Louisiana, on the 4th day of June, 1940, at 10 A. M., why an order of this Court should not issue directing the said respondent to appear before petitioner, or Stephen R. MacRae, an officer duly designated by him, or any other officer duly designated by him, at such time as this Court may determine, and at room 1512 Pere Marquette Building, 150 Baronne Street, in the City of New Orleans, Louisiana, and there to produce the following books, papers, and documents:

(1) Any and all books and records which record the wages paid to your employees employed in your plant in Shreveport, Louisiana, during the period from October 24, 1938, to March 23, 1940;

(2) Any and all books, documents, time cards, time sheets, papers, or memoranda made or kept by you which record the hours worked each workday and each workweek by your said employees during the period from October 24, 1938, to March 23, 1940;

(3) Any and all books, records, documents, receiving slips, invoices, or memoranda of purchases and shipments received by you during the period from October 24, 1938, to March 23, 1940;

(4) Any and all invoices, shipping receipts, copies of bills of lading, or other documents, records or memoranda pertaining to goods sold, shipped, delivered, transported, or offered for transportation from your said plant in Shreveport, Louisiana, during the period from October 24, 1938, to March 23, 1940;

41 and to give evidence such as is required by the subpoena duces tecum of the Administrator of the Wage and Hour Division, which was duly served upon respondent in connection with the investigation of respondent pursuant to Sections 9 and 11 (a) of the Fair Labor Standards Act of 1938 (Public No. 718, 75th Congress; 52 Stat. 1060).

Service of a copy of this order shall be made on or before the 23rd day of May, 1940.

(Sgd.) A. J. CAILLOUET,
United States District Judge.

42 MOTION TO DISMISS.

Number and Title Omitted.

(Filed June 14, 1940.)

Now into Court comes Cudahy Packing Company of Louisiana Ltd., for the special purpose and no other until the questions herein raised are decided, and moves the Court as follows:

1. To dismiss this complaint because this Court does not have jurisdiction ratione materae and/or jurisdiction ratione personae, for the following reasons, to-wit:

That your mover is a corporation duly organized and existing under and by virtue of the laws of the State of Louisiana; that it is a separate and distinct entity, and is not a branch of any other corporation or corporations; that it is not engaged in the production of goods for commerce or in the transportation of goods in commerce, and that it is not engaged in any of the classes of businesses governed by the Fair Labor Standards Act of 1939. (Act of 6/25/38 U. S. C. Title 29, Sec. S. E. C. 201 et seq.)

2. That in the alternative, and the alternative only, in the event the motion to dismiss for lack of jurisdiction is overruled, then your respondent moves that the subpoena duces tecum for the production of the documents set forth in same and which petitioner is herein attempting to have enforced, be quashed, for the following reasons, to-wit:

(a) That no charges have been made against your respondent, or sufficient allegations of belief that your respondent is guilty of any violations of the act to justify the forceful production of any of its records or documents.

(b) That the subpoena is unreasonable in that it is not particular in its object or purposes; that same calls for the production of all of the records pertaining to the wages paid its employees in Shreveport from October
43 24th, 1938 through March 23rd, 1940, and all invoices, shipping receipts and other documents pertaining to goods sold, shipped or delivered or offered for transportation from the Shreveport branch during the period from October 24th, 1938 through March 23rd, 1940, all as is set forth in Items One, Two, Three and Four of Exhibit "D" attached to the complaint; that your respondent would be burdened with unwarranted expenses in the production of same, and further, that the petitioner has failed to inform your respondent of any particular violation that he intends to prove by the said documents described in his subpoena.

3. That in the alternative, and the alternative only, in the event the motion to dismiss for lack of jurisdiction and the motion to quash are overruled, then your respondent moves for a bill of particulars for the following reasons, to-wit:

That plaintiff's complaint contains numerous conclusions of fact and of law, and that he has not set forth in any allegation, facts with sufficient definiteness to enable respondent to properly prepare responsive pleadings thereto, or to properly prepare the trial of this case.

Wherefore, mover prays that plaintiff's proceedings be dismissed at his costs.

(Sgd.) STEPHEN C. HARTEL,
(Stephen C. Hartel),
(Sgd.) JONAS C. SPORL,
(Jonas C. Sporl),
Attorneys for Respondent.

745 Canal Bank Bldg.

Notice of motion to George A. McNulty, Irvin J. Levy, Bessie Margolin and D. Douglas Howard, Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, #1512 Pere Marquette Building, New Orleans, La.

44 Please take notice that the undersigned will bring the above motion on for hearing before this Court at the United States Courthouse in the City of New Orleans, on the 18th day of June, 1940, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

(Sgd.) STEPHEN C. HARTEL,
(Stephen C. Hartel),
(Sgd.) JONAS C. SPORL,
(Jonas C. Sporl),
Attorneys for Respondent.

745 Canal Bank Bldg.

Service accepted. June 14th, 1940.

All rights reserved.

GEORGE A. McNULTY,
IRVIN J. LEVY,
BESSIE MARGOLIN and
D. DOUGLAS HOWARD,
Attorneys for Plaintiff,
(Sgd.) By D. DOUGLAS HOWARD,
(D. Douglas Howard).

AFFIDAVIT OF HENRY T. CHAMBERS, DESIGNATED REPRESENTATIVE OF THE ADMINISTRATOR, WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR.

45 Number and Title Omitted.

(Filed June 15th, 1940.)

State of Louisiana,
Parish of Orleans, ss.

HENRY T. CHAMBERS, being duly sworn, deposes and says:

That he is an inspector and designated representative of the Administrator of the Wage and Hour Division, United States Department of Labor, (hereinafter referred to as "Administrator");

That a complaint was filed at the New Orleans office of the Wage and Hour Division on August 8, 1939, stating that the Shreveport Branch of the Cudahy Packing Company of Louisiana, Ltd., (hereinafter referred to as the "company"), was violating the Fair Labor Standards Act of 1938 (hereinafter referred to as the "Act");

That while the complaint did not specify the particular provisions of the Act which were violated, it appeared reasonable to believe that if the facts alleged in the complaint were established the company was violating Sections 7, 11 (c), 15 (a) (2), and 15 (a) (5) of the Act;

That pursuant to instructions from and authority of the Administrator, the affiant interviewed the complainant and his statements were such as to indicate that the allegations

of violations of the Act contained in the complaint were based upon reasonable grounds;

That subsequent thereto, not less than six additional complaints were made to affiant, as representative of the Administrator, charging that the company was violating various provisions of the Act;

That pursuant to instructions and authority of the Administrator, affiant visited the company on February 26, 1940, and requested permission to examine the payroll and time records of the company; the manager of the company stated that he could not deliver the records without permission from his central office; on February 28, 1940, the manager of the company purported to read to affiant the following message which he said was contained in a telegram from the legal division of the company's central office in Chicago: "Will consider written request
46 covering specific complaints and dates only"; at this point affiant made a formal demand for the records; the demand was refused and no records were made available to affiant;

That affiant has interviewed and received signed statements from not less than seven employees of the company stating that during the period under investigation, i. e., from October 24, 1938, up to and including the date of said interviews, employees of said company had performed hours of work for which no compensation was received, and, as to some of these employees, such hours of work were not recorded on the records of the company; all of the foregoing showing probable violations of Sections 6, 7, 11 (c), 15 (a) (2), and 15 (a) (5) of the Act;

That the aforesaid interviews and signed statements disclosed that there were reasonable grounds to believe that most of the meats and other materials used or handled in

the Shreveport plant of the company have been and are being shipped from Missouri, Nebraska, Iowa, Georgia, Alabama, and Wisconsin, and the products produced or handled by the company have been and are being sold, shipped and delivered by the company to numerous "chain," "community," and retail stores in Louisiana, Texas, and Arkansas.

(Sgd.) HENRY T. CHAMBERS.

Sworn to and subscribed before me this 15th day of June, 1940.

June 15, 1940. Service accepted. All rights reserved.

(Sgd.) STEPHEN C. HARTEL.

(Sgd.) D. DOUGLAS HOWARD,

(Seal) Notary Public.

My commission expires: at death.

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47 MOTION TO STRIKE.

Number and Title Omitted.

(Filed June 18, 1940.)

Now into Court comes Cudahy Packing Company of Louisiana, Ltd., and moves the Court to strike the affidavit of Henry T. Chambers filed in these proceedings, for the following reasons, to-wit:

That said affidavit should be stricken from the record because it is an ex parte document;

That your mover has not been confronted by the witness, nor had the opportunity to examine the witness under

cross-examination, and that your mover has not agreed to any of the statements therein contained:

Wherefore, mover prays that the affidavit of Henry T. Chambers be stricken from the record.

(Sgd.) STEPHEN C. HARTEL,
(Stephen C. Hartel),
(Sgd.) JONAS C. SPORL,
(Jonas C. Sporl),
Attorneys for Respondent.

745 Canal Bank Bldg.

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48 EXTRACT FROM THE MINUTES.

May Term.

(Number and Title Omitted.)

New Orleans, Tuesday, June 18th, 1940.

Court met pursuant to adjournment;

Present:
Hon. Rufus E. Foster, U. S. Judge.
Hon. A. J. Caillouet, Judge.

This cause came on this day to be heard on the rule to show cause, issued on application of petitioner, for an order of Court directing respondent to appear before petitioner, or Stephen K. MacRae, an officer duly designated by him, or any other officer duly designated by him, at such time as this Court may determine, and at room 1512 Pere Marquette Building, 150 Baronne Street, in the City of New Orleans, Louisiana, and there to produce the following books, papers, and documents:

(1) Any and all books and records which record the wages paid to your employees employed in your plant in Shreveport, Louisiana, during the period from October 24, 1938, to March 23, 1940;

(2) Any and all books, documents, time cards, time sheets, papers, or memoranda made or kept by you which record the hours worked each workday and each workweek by your said employees during the period from October 24, 1938, to March 23, 1940;

(3) Any and all books, records, documents, receiving slips, invoices, or memoranda of purchases and shipments received by you during the period from October 24, 1938, to March 23, 1940;

(4) Any and all invoices, shipping receipts, copies of bills of lading, or other documents, records or memoranda pertaining to goods sold, shipped, delivered, transported, or offered for transportation from your said plant in Shreveport, Louisiana, during the period from October 24, 1938, to March 23, 1940;

and to give evidence such as in required by the subpoena duces tecum of the Administrator of the Wage and Hour Division, which was duly served upon respondent in connection with the investigation of respondent pursuant to Sections 9 and 11 (a) of the Fair Labor Standards Act of 1938 (Public No. 718, 75th Congress; 52 Stat. 1060), and upon respondent's motion to dismiss the application for lack of jurisdiction ratione materiae and ratione personae, and, in the alternative, for the denial of the order on the ground that no charges have been made against respondent or sufficient allegations of belief that respondent is guilty of any violations of the Act and because said subpoena duces tecum is unreasonable; and on respondent's further motion for a bill of particulars.

Present:

Miss Bessie Margolin and D. Douglas Howard, Attorneys for Petitioner,

Jonas Sporl and Stephen Hartel, Esqs., Attys. for Respondent.

49 Whereupon, after hearing argument of counsel, and it appearing that the jurisdiction of the Court is established by the petitioner's application and respondent's motion to dismiss, and it further appearing that no charge or showing of violations of the act are required as a prerequisite to the issuance of this order, and considering the motion filed in open Court by respondent for the purpose of striking from the record the affidavit of Henry T. Chambers filed prior to the hearing herein,

It Is Ordered by the Court that the motion to strike the affidavit of Henry T. Chambers be, and it is, hereby maintained, and said affidavit is ordered striken from the record.

It Is Further Ordered that respondent's motion to dismiss for lack of jurisdiction ratione materiae and ratione personae be denied.

It Is Further Ordered that respondent do appear before petitioner or Stephen R. MacRae, an officer duly designated by him, or any other officer duly designated by petitioner, on July 2nd, 1940, at Room 1512 Pere Marquette Building, 115 Baronne Street, in the City of New Orleans, Louisiana, and there produce the following books and documents detailed in paragraphs 1 and 2 of the rule to show cause, and give such evidence relating thereto as is required by the aforesaid subpoena duces tecum of the Administrator of the Wage and Hour Division, to-wit:

(1) Any and all books and records which record the wages paid to your employees employed in your plant in Shreveport, Louisiana, during the period from October 24, 1938, to March 23, 1940;

(2) Any and all books, documents, time cards, time sheets, papers, or memoranda made or kept by you which record the hours worked each workday and each workweek by your said employees during the period from October 24, 1938, to March 23, 1940.

50 It Is Further Ordered that the rule for production of the records and documents detailed in paragraphs 3 and 4 is presently denied, leaving open the question, however, for subsequent presentation to the Court, in due course of the investigation, of a further request for the production of such other books, records, documents or evidence as are included under paragraphs 3 and 4 of the present rule, should occasion suggest the presentation of such further application to the Court.

New Orleans, Louisiana,
June 18th, 1940.

(Signed) A. J. CAILLOUET,
Judge.

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51 NOTICE OF APPEAL.

Number and Title Omitted.

(Filed June 28, 1940.)

Notice is hereby given that Cudahy Packing Company of Louisiana, Ltd., respondent in the above entitled and numbered matter, hereby appeals to the United States Cir-

cuit Court of Appeals for the Fifth Circuit, from the final judgment and order rendered by the Honorable A. J. Caillouet, Judge of the District Court of the United States, Eastern District of Louisiana, New Orleans Division, entered herein on June 18th, 1940, in all respects except as to that portion of said judgment wherein the Court ordered the affidavit of Henry T. Chambers stricken from the record, and also except in so far as the order presently denied the production of the documents detailed in paragraphs three (3) and four (4) of the subpoena duces tecum.

(Sgd.) STEPHEN C. HARTEL,
(Stephen C. Hartel),
(Sgd.) JONAS C. SPORL,
(Jonas C. Sporl),
Attorneys for Cudahy Packing Company of Louisiana, Ltd., Respondent and Appellant.

Address of Stephen C. Hartel,
#745 Canal Bank Buliding,
New Orleans, La.
Address of Jonas C. Sporl,
#745 Canal Bank Buliding,
New Orleans, La.

STIPULATION AS TO RECORD FOR APPEAL.

52 Number and Title Omitted.

(Filed July 16, 1940.)

Honorable A. Dallam O'Brien, Jr., Clerk of the United States District Court for the Eastern District of Louisiana, New Orleans Division, New Orleans, La.

Dear Sir:

It is stipulated and agreed between counsel for appellant, Cudahy Packing Company of Louisiana, Ltd., and counsel

for appellee, Philip B. Gleming, Administrator of the Wage and Hour Division, United States Department of Labor, that in making up the transcript of appeal in the above entitled and numbered cause, you will include therein the entire record.

(Sgd.) STEPHEN C. HARTEL,
(Shephen C. Hartel),
(Sgd.) JONAS C. SPORL,
(Jonas C. Sporl),
Attorneys for Cudahy Packing Co. of La., Ltd, Appellant.

745 Canal Building,
New Orleans, La.

Sgd.) D. DOUGLAS HOWARD,
(D. Douglas Howard),
Attorney for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, Appellee.

1512 Pere Marquette Bldg.,
New Orleans, La.

SUPPERSEDEAS BOND ON APPEAL.

52a Number and Title Omitted.

(Filed: June 28, 1940.)

Know All Men By These Presents, That we, Cudahy Packing Company of Louisiana, Ltd., as principal, and American Employers' Insurance Company, as surety, acknowledge ourselves to be jointly indebted to Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, appellee in the above cause, in the sum of Five Hundred and 00/100 Dollars ($500.00), conditioned that, whereas, on the 18th day of June, 1940, in the District Court of the United States for the Eastern District of Louisiana, in a suit depending in that Court wherein Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, was petitioner, and Cudahy Packing Company of Louisiana, Ltd., was respondent, numbered on the docket as Civil Action 341, a judgment was rendered against the said Cudahy Packing Company of Louisiana, Ltd., and the said Cudahy Packing Company of Louisiana, Ltd., having filed in the office of the Clerk of the said District Court a notice of appeal to the United States Circuit Court of Appeals in the Fifth Circuit, to be holden in the City of New Orleans, State of Louisiana, on the third Monday of November, 1940 next.

Now, the condition of the above obligation is such that if the said Cudahy Packing Company of Louisiana, Ltd., shall prosecute its appeal to effect and satisfy the said judgment in full together with costs, interest and damages for delay, if for any reason the appeal is dismissed or the judgment is affirmed, and satisfy in full such modification of the judgment and such costs, interest and damages as the Appellate Court may adjudge and award, then the

above obligation is void, else to remain in full force and effect.

Thus Done, Dated and Signed On This 28th day of June in the year of our Lord, one thousand nine hundred and forty.

CUDAHY PACKING COMPANY OF LOUISIANA, LTD.,
(Sgd.) By STEPHEN C. HARTEL,
Principal. (Seal)
AMERICAN EMPLOYERS' INSURANCE COMPANY,
(Sgd.) By SIDNEY J. GIBSON,
Atty-in-Fact,
Surety. (Seal)

Approved this 28th day of June, 1940.
(Sgd.) A. J. CAILLOUET,
Judge.

53 Clerk's Office:

I, A. DALLAM O'BRIEN, JR., Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 52 pages contain and form a full, true and complete transcript of the record, in the cause entitled "Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, versus, Cudahy Packing Company of Louisiana, Ltd.," No. 341 of the Civil Action docket of this Court, as made up in accordance with the stipulation for transcript copied herein.

Witness my hand and the seal of the said Court at the City of New Orleans, La., this 24th day of July, A. D. 1940.

A. DALLAM O'BRIEN, JR.,
Clerk,
By H. W. NIEHUES,
Deputy Clerk.

(Seal)

[fol. 69] IN UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT

No. 9619

CUDAHY PACKING COMPANY OF LOUISIANA, LTD.,

versus

PHILIP B. FLEMING, Administrator of the Wage and Hour Division, United States Department of Labor

ARGUMENT AND SUBMISSION—April 1, 1941

On this day this cause was called, and, after argument by Stephen C. Hartel, Esq., for appellant, was submitted to the Court.

[fol. 70] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 9619

CUDAHY PACKING COMPANY OF LOUISIANA, LTD.,
Appellant,

versus

PHILIP B. FLEMING, Administrator of the Wage and Hour Division, United States Department of Labor, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

(April 19, 1941)

Before Foster, Hutcheson, and Holmes, Circuit Judges

OPINION OF THE COURT—Filed April 19, 1941

By the COURT:

The Administrator of the Wage and Hour Division issued a *subpoena duces tecum*, under the provisions of the Fair Labor Standards Act of 1938, against Cudahy Packing Company of Louisiana, Ltd., requiring it to appear before

a designated representative in New Orleans, at a time and place fixed, to testify and produce certain documents relative to the wages paid their employees and the hours worked [fol. 71] during the period from October 24, 1938 to March 23, 1940.

The packing company declined to comply and a proceeding was brought in the United States District Court for the Eastern District of Louisiana to compel obedience to the subpoena. After an extended hearing, the Court entered judgment compelling obedience to the order, with certain exceptions as to some of the records called for. This appeal followed.

There is no doubt the administrator had authority to issue the subpoena and the Court had jurisdiction to enforce it. *W. "Blondie" Graham vs. Federal Tender Board No. 1; The President of the United States vs. Skeen and Duncan,* both decided by us March 4, 1941.

No error appearing from the record, the judgment is Affirmed.

[fol. 72] In United States Circuit Court of Appeals

No. 9619

Cudahy Packing Company of Louisiana, Ltd.,

versus

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor

Judgment—April 19, 1941

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

[fols. 73-79] Petition for rehearing covering 7 pages, filed May 8, 1941, omitted from this print. It was denied, and nothing more by order of May 31, 1941.

[fol. 80] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 9619

CUDAHY PACKING COMPANY OF LOUISIANA, LTD.,

versus

PHILIP B. FLEMING, Administrator of the Wage and Hour Division, United States Department of Labor

ORDER DENYING REHEARING—May 31, 1941

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 81] **Motion and Order Staying Mandate**—Filed June 12, 1941.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 9619

PHILIP B. FLEMING, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff-Appellee,

versus

CUDAHY PACKING COMPANY OF LOUISIANA, LTD., Defendant-Appellant

Appeal from the District Court of the United States for the Eastern District of Louisiana

MOTION FOR STAY OF EXECUTION OF JUDGMENT

The motion of Cudahy Packing Company of Louisiana, Ltd., defendant-appellant, appearing herein through its attorneys, Stephen C. Hartel, Leopold Stahl, and Jonas C. Sporl, with respect represents:

That mover desires a stay of execution of the judgment of the Court pending its application for a Writ of Certiorari to the Supreme Court of the United States; such stay to

be granted under the conditions and for such period as this Honorable Court may determine.

Wherefore mover prays that it be granted a stay of execution of the judgment herein, under such conditions and for such period as this Court may determine, pending the filing of a Writ of Certiorari and Review to the Supreme Court of the United States.

Stephen C. Hartel, Leopold Stahl, Jonas C. Sporl,
(Signed) Stephen C. Hartel, Leopold Stahl, 745 Canal Building, New Orleans, La., Attorneys for Cudahy Packing Company of Louisiana, Ltd., Defendant-Appellant. Of Counsel.

[fol. 82] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 9619

CUDAHY PACKING COMPANY OF LOUISIANA, LTD., Appellant,

versus

PHILIP B. FLEMING, Administrator of the Wage and Hour Division, United States Department of Labor, Appellee

On Consideration of the Application of the appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate

shall be filed with the clerk of this court within that time.

Done At New Orleans, La., this 12th day of June, 1941.

(Signed) J. C. Hutcheson, Jr., United States Circuit Judge.

[fol. 83] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 84] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.